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and Olive RHF Housing Partners, L.P.
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 HILL RHF HOUSING PARTNERS, L.P., a
California limited partnership; OLIVE RHF
12 HOUSING PARTNERS, L.P., a California limited
partnership,
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14 Petitioners/Plaintiffs,

15 vs.

16 CITY OF LOS ANGELES; DOWNTOWN
CENTER BUSINESS IMPROVEMENT
DISTRICT, a special assessment district in the
17 City of Los Angeles; DOWNTOWN CENTER
BUSINESS IMPROVEMENT DISTRICT
18 MANAGEMENT CORPORATION, a California
nonprofit corporation,
19

20 Respondents/Defendants.
21

CASE NO. BS138416

[Assigned to Hon. Amy D. Hogue, Dept. 86]

**NOTICE OF RULING RE MOTION TO
ENTER JUDGMENT**

DATE: January 31, 2018

TIME: 9:30 a.m.

DEPT: 86

Complaint Filed: July 18, 2012

22 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

23 PLEASE TAKE NOTICE that on January 31, 2018, at 9:30 a.m., the parties appeared in
24 Department 86 in this matter for the hearing on Petitioners'/Plaintiffs' Motion to Enter Judgment
25 pursuant to Code of Civil Procedure Section 664.6. Petitioners/Plaintiffs Hill RHF Housing
26 Partners L.P. and Olive RHF Housing Partners, L.P. were represented by Stephen L. Raucher
27 and Hana S. Kim; Respondent City of Los Angeles was represented by Daniel Whitley;
28 Respondent Downtown Business Improvement District Management Corporation was

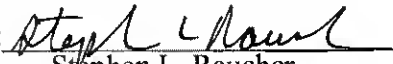
NOTICE OF RULING RE MOTION TO ENTER JUDGMENT

1 represented by Holly Whatley.

2 The Court denied Petitioners'/Plaintiffs' Motion to Enter Judgment pursuant to Code of
3 Civil Procedure Section 664.6 and adopted the Court's Tentative Ruling, as amended, as its
4 Ruling, attached hereto as Exhibit A.

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6 DATED: January 31, 2018

REUBEN RAUCHER & BLUM

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8 By: 
9 Stephen L. Raucher
Attorneys for Petitioners/Plaintiffs

COUNTY OF LOS ANGELES

HILL RHF PARTNERS, L.P., a California limited partnership; OLIVE RHF HOUSING PARTNERS, L.P., a California limited partnership

Petitioners/Plaintiffs

vs.

CITY OF LOS ANGELES; DOWNTOWN
CENTER BUSINESS IMPROVEMENTS
DISTRICT et al.,

Respondents/Defendants

Case No.: BS138416

**[Tentative] Order Denying Motion to Enter
Judgment Enforcing Settlement Agreement**

January 31, 2018
9:30 a.m.
Dept. 86

This dispute arises out of a February 2013 Settlement Agreement and Release (Agreement) between Petitioners and Respondent City of Los Angeles (City). (Stouff Decl., Exh. 1.) In the Agreement, the parties stipulated this Court would retain jurisdiction under Code of Civil Procedure Section 664.6 to resolve disputes arising out of the Agreement. (Id., ¶ 1(g).)

Petitioners are non-profit corporations operating real estate within a special assessment district (the Downtown Center Business Improvement District (DCBID)) originally formed by

1 the passage of the City's 1997 Ordinance No. 171678. (Decl. Daniel Whitley, Exh. A.) The
2 central issue is whether the Agreement should be interpreted to lapse upon the expiration of the
3 June 12, 2012 Ordinance forming the Downtown Center Business Improvement District
4 (DCBID) challenged in the July 18, 2012 Petition or interpreted to survive the expiration of the
5 June 12, 2012 ordinance. The Court interprets an agreement as a matter of law based on the
6 plain language of the agreement and any extrinsic evidence supporting a meaning to which the
7 agreement is reasonably susceptible. *Pacific Gas & Electric Co. v. G.W. Thomas Drayage &*
8 *Rigging Co.* (1968) 69 Cal.2d 33, 36.) As set forth below, the Court agrees with the City that the
9 Agreement has no continuing force and effect.

10 **I. Procedural History**

11 Los Angeles' DCBID originated in a 1997 Ordinance (Ordinance No. 171678.) (Whitley
12 Decl., Exh. A.) The 1997 Ordinance was superseded by Ordinance No. 174594 passed in 2002,
13 and further superseded by Ordinance No. 179028 passed in 2007. (*Id.*, Exhs. B and C.) The
14 2007 Ordinance specified a five year term, stating the DCBID's "operational period shall begin
15 on January 1, 2008 and end on December 31, 2012." (*Id.*, Exh. D, Sec. 14.) On April 10, 2012,
16 the City Council passed Ordinance No. 182107 (approved by the Mayor on April 11, 2012)
17 renewing the DCBID for another five year period (through December 31, 2017.) (Petition ¶13
18 and Pet. Exh. A, Sec.9.)

19 A few months later, on July 18, 2012, Petitioners sued the City, the DCBID and the
20 DCBID's Management Corporation in this action seeking a peremptory writ of mandate
21 requiring Respondents to exempt Petitioners "from any and all assessments, fees and/or special
22 taxes associated with the DCBID" and declaratory relief to the same effect. (Pet., p. 13, ¶ 1.)
23 The Petition defines "the DCBID" in Paragraph 13 which alleges, "On April 10, 2012, the [City
24 Council] passed Ordinance No. 182107 . . . stating its intent to establish a Property and Business
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1 Improvement District ('the DCBID').” (Pet. ¶ 13.) The Petition’s four causes allege the DCBID
2 (1) violated Streets & Highways Code § 33632, (2) violated the California Constitution, Article
3 XIII D (requiring separation specific and general benefits), (3) violated the California
4 Constitution Article XIII D (requiring that base assessments be based on expenditures), and (4)
5 violated Revenue & Taxation Code § 214 and 26 U.S.C. § 501.

6 In February 2013, Petitioners and the City resolved the lawsuit by entering into the
7 Agreement. (Stouff Decl., Exh. 1.) In RECITALS, the Agreement explains a dispute had arisen
8 between the parties as set forth in the lawsuit and that the “litigation concerns the formation of
9 the DCBID, adopted by ordinance of the City Council on June 19, 2012.” (*Id.*, ¶¶ 1, 2.) The
10 RECITALS further explain:

11 “5. In order to resolve the matters raised and described in the Litigation, the
12 City will undertake to make the Plaintiffs whole for those assessments made by the
13 DCBID against the properties owned by Plaintiffs at the time of the formation of the
14 DCBID, as described in the Petition. For so long as the Plaintiffs remain the owners of
15 these properties, and the DCBID continues in its current formulation, the City will remit
16 to Plaintiffs an amount sufficient to satisfy the amounts paid by Plaintiffs to the DCBID
17 as part of the assessments set forth in the Engineer’s Report and the Management Plan.”
18 (*Id.*, ¶ 5.) Paragraph 6 of the RECITALS states “Plaintiffs will remain part of the DCBID and
19 will abide by the terms of the DCBID until the DCBID expires in 2018.” The Agreement then
20 sets forth certain Compensation the City agreed to pay, the timing of the payments, a mutual
21 release of claims, a Section 1542 waiver of unknown claims, and an agreement to have the court
22 retain jurisdiction over any disputes arising under the Agreement (with the prevailing party
23 entitled to recover attorney’s fees). (*Id.*, ¶ 1.a. – 1.h.)

24 Both parties performed under the Agreement without incident. However, as the five year
25 term of the 2012 ordinance approached, the City Council passed a June 7, 2017 ordinance

(Ordinance 185006) establishing a DCBID for a five year “operational period” running from January 1, 2018 through December 31, 2027. (Whitley Decl., Exh. G.)

II. Analysis

Petitioners urge the Court to interpret Paragraph 5 of the RECITALS as an agreement obligating the City to continue to pay compensation to Petitioners under the 2017 ordinance establishing the current DCBID (Ordinance No. 185006). The City counters that the Agreement, particularly Paragraphs 2 and 6, plainly limit the City’s obligations to pay compensation to the DCBID “adopted by ordinance of the City Council on June 19, 2012.” (Opp. p. 4.)

The Court agrees with the City that the plain language of the Agreement limits the City’s obligations to the term of the 2012 ordinance challenged in the Petition. As a preliminary matter, it is not reasonable to interpret the Agreement as an agreement to settle anything other than pending claims. The claims pending when the parties executed the Agreement were the claims alleged in the Petition. As noted above, the Petition specifically challenged Ordinance No. 182107 (the ordinance effectuating the 2012 DCBID attached as Exhibit A to the Petition) on the grounds that it violated various statutes and provisions in the California constitution. (Pet., ¶13 et seq.) It also specifically challenged the reports supporting that ordinance, the January 12, 2012 Engineer’s Report and the January 2012 DCBID Management District Plan (Pet. Exhs. B and C.)

The Petition did not (and could not) challenge the City’s recent Ordinance No. 185006 (which is supported by a new March 2017 Engineer’s Report.) (Raucher Decl. Exh. 9.) To challenge the 2017 ordinance effectuating the current DCBID, Petitioners must file a new action. ~~The waiver clause in the Agreement supports this interpretation. Because Ordinance No. 185006 did not exist when the parties executed the Agreement, claims arising out of it were necessarily~~

~~unknown to the parties. The parties' waiver of such unknown claims under Section 1542 is evidence the Agreement did not apply to such claims. (Agreement, ¶ 1(g).)~~

Other language in the Agreement also supports this interpretation. For example, in Paragraph 4 of the RECITALS, the parties recited they were “now desirous of settlement of all of their claims against each other *arising out of and as described in the Litigation.*” (Agreement, ¶ 4, emphasis added.) This notion is reiterated in Paragraph 5 of the RECITALS which explains that “[i]n order to resolve *the matters raised and described in the Litigation,*” the City would endeavor to make Plaintiffs’ whole. (Agreement, ¶ 5, emphasis added.) As noted above, the Petition specifically challenged the 2012 ordinance and the 2012 ordinance is the only ordinance “raised and described in the litigation.” The Petition did not (and legally could not) challenge the unknown terms of a future ordinance.

Based on the allegations in the Petition, the Court interprets every reference to “the DCBID” in the Agreement as a reference to the 2012 ordinance and as evidence the parties only intended to agree to perform mutual promises while that ordinance was in effect. (Agreement (RECITALS) ¶¶ 1, 2, 3, 5, 6; and ¶ 1(a)(i).) If the parties intended their Agreement to apply to future ordinances, they would have drafted language identifying such future ordinances. The absence of such language is evidence the parties did not so intend.

The court rejects, as unreasonable, Petitioners’ argument Paragraph 5 should be interpreted to apply to future ordinances. According to Petitioners, the City’s agreement to undertake to make Petitioners whole “[f]or so long as the Plaintiffs remain the owners of these properties, and the DCBID continues in its current formulation” was a commitment to make payments to Petitioners forever. (Agreement, ¶ 5.) The Court rejects this argument. As noted above, the term “the DCBID” is a defined term under Paragraph 1 that references back to the 2012 ordinance “as set forth in . . . the Litigation.” (Agreement, ¶ 1.) Other language in that paragraph also limits its effect to the ordinance challenged in the Petition. For example,

1 Paragraph 5 ties the City's commitment to 2012 "Engineer's Report and the Management Plan"
2 attached to the Petition. (*Id.*) It also ties the City's obligations to a resolution of "the matters
3 raised and described in the Litigation." The Court interprets these caveats as further evidence the
4 parties intended the Agreement to cover the term of the 2012 Ordinance and intended the
5 Agreement would expire when that Ordinance expired.

6 It is also unreasonable to interpret the Agreement as continuing indefinitely, with no
7 specified term regardless whether the ordinance challenged in the Petition was superseded by
8 ordinances that did not violate the statutory or constitutional provisions giving rise to the
9 Petition. When an agreement has no specified term, the Court will imply a reasonable term. (1
10 Witkin, Summary of Calif. Law (11th Ed) Contracts § 143.) Therefore even accepting
11 Petitioners' argument *arguendo*, the Court concludes that the reasonable term for the Agreement
12 was the term of the Ordinance challenged in the Petition and that the Agreement either lapsed
13 when that Ordinance expired or was subject to termination by the City.

14 Petitioners' promise to "remain part of the DCBID and [abide] by the terms of the
15 DCBID until the DCBID expires in 2018" is additional evidence the parties did not intend to
16 continue to perform after the 2012 Ordinance expired. (Agreement, ¶ 6.) It is not reasonable to
17 interpret the Agreement to allow Petitioners to cease to perform under the Agreement after the
18 2012 ordinance expired while requiring the City to continue to perform. (*Id.*) Other language in
19 Paragraph 6 ("this agreement does not address any business improvement districts except the
20 DCBID adopted by the ordinance of the City Council on June 19, 2012) provides further
21 evidence the parties intended the Agreement to cover only the pending DCBID. (*Id.*)

22 **III. Conclusion**

23 As a matter of law, the Court interprets the Agreement as a settlement of claims arising
24 out of the 2012 ordinance and concludes neither party has any obligation to further perform
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1 under the Agreement since that ordinance expired. The Court therefore denies Petitioners'
2 Motion. The Court does not reach the City's request for an award of attorneys' fees because the
3 City did not file a Motion for Attorney's fees.

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5 Dated: January 31, 2018

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Amy D. Hogue
Judge of the Superior Court
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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is **12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.**

On January 31, 2018, I served the foregoing document described as:

NOTICE OF RULING RE MOTION TO ENTER JUDGMENT

on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

<p>Daniel M. Whitley, Esq. City Attorney City Hall East 200 N. Main Street, Room 920 Los Angeles, CA 90004 Telephone: (213) 978-7786 Facsimile: (213) 978-7811</p> <p>Attorneys for City of Los Angeles</p>	<p>Michael G. Colantuono, Esq. mcolantuono@chwlaw.us Ryan Thomas Dunn, Esq. rdunn@chwlaw.us Colantuono, Highsmith & Whatley, PC 790 East Colorado Boulevard, Suite 850 Pasadena, CA 91101 Telephone: (213) 542-5700 Facsimile: (213) 542-5710</p> <p>Attorneys for Downtown Center BID Management Corporation</p>
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I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited in U.S. Postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2018, at Los Angeles, California.


Nathalie Quach